marriage he declared to the plaintiff, his wife, that the symptoms were merely those of a cold. Subsequent to the marriage he was pronounced incurably affected with the disease. There were no children and immediately upon knowledge of her husband's condition she ceased to cohabit with him and filed suit for an annulment of the marriage. *Held*, this is sufficient fraud to justify an annulment. *Sobol* v. *Sobol* (N. Y. Sup. Ct.), 150 N. Y. Supp. 248. See NOTES, p. 465.

PLEADING—WILLFUL INJURY.—In an action for wrongful death a paragraph of the complaint averred that the defendant's engineer saw the decedent when the train was 400 feet from the crossing, but did nothing to warn him, nor made any attempt to stop the train, but purposely, willfully, and without regard to the rights of the decedent caused the locomotive running at a speed of 60 miles per hour to run upon and strike the buggy in which the decedent was riding, throwing him to the ground and killing him. *Held*, sufficient to charge a willful injury, though there was no averment of an intent to commit the injury. *Cleveland, etc., R. Co.* v. *Starks* (Ind.), 106 N. E. 646.

To constitute a willful injury there must be an intent to inflict the injury complained of. *Birmingham R. & E. Co.* v. *Bowers*, 110 Ala. 328, 20 South. 345. The decisions are not consistent as to the necessity of averring this intent in the pleadings. It has been said that to charge a willful injury, the complaint must aver that the injury was purposely and intentionally committed with the intent to inflict the injury complained of. *Union Traction Co.* v. *Lowe*, 31 Ind. App. 336, 67 N. E. 1021; *So. R. Co.* v. *McNeely*, 44 Ind. App. 126, 88 N. E. 710, 714. In accordance with this it has been held that a mere averment that the plaintiff was wantonly and willfully injured does not charge a willful injury. *Belt R. & Stock-Yard Co.* v. *Mann*, 107 Ind. 89, 7 N. E. 893. Nor does an averment that the defendant carelessly, negligently, wantonly and willfully ran its train over appellee charge such an injury. *Louisville, etc., R. Co.* v. *Adler*, 110 Ind. 376, 11 N. E. 437. On the other hand an averment that the appellant willfully and willingly did inflict the injury has been held sufficient to charge willful injury. *Chicago, etc., R. Co.* v. *Nash*, 1 Ind. App. 298, 27 N. E. 564. Also, an allegation that the defendant wantonly or willfully injured the plaintiff states a good cause of action for willful injury. *Yarbrough* v. *Carter*, 179 Ala. 356, 60 South. 833. These last two cases seem to proceed upon the theory that the intent is sufficiently averred by the use of the word "willfully." This seems to be the tendency of the modern decisions. See *Vandalia R. Co.* v. *Clem*, 49 Ind. App. 94, 96 N. E. 789. But there must be an inference from the complainant that the injury was intentionally inflicted. *Birmingham Light & Power Co.* v. *Brown*, 15 Ala. 327, 43 South. 342; *Neyman* v. *Alabama, etc., R. Co.*, 172 Ala. 606, 55 South. 509, Ann. Cas. 1913E, 232. If it appears from the complaint that the wrongdoer was not aware of the possibility of an accident, the complaint does not charge willful injury, despite an allegation of willfullness. *Vandalia R. Co.* v. *Clem*, *supra*. But knowledge of the state of affairs may be imputed to him

from facts set out in the complaint. See *Louisville, etc., R. Co.* v. *Anchors,* 114 Ala. 492, 22 South. 279; *Birmingham Light & Power Co.* v. *Brown, supra.*

The principal case seems to be in accord with the modern authorities in its holding that there need be no express averment of the intent to inflict the injury in charging willful injury.

TELEGRAPH AND TELEPHONES—DELAY IN DELIVERY OF MESSAGE—DAMAGES FOR MENTAL ANGUISH.—The plaintiff sued to recover for mental anguish occasioned by the failure of the telegraph company to promptly transmit a message to her father-in-law requesting his presence to comfort her during her husband's serious illness. *Held,* the defendant is liable. *Western Union Tel. Co.* v. *Holland* (Ala.), 66 South. 926. See NOTES, p. 457.